The Accused S.Dhanapalan was directed to be released on bail by the order of this Court dated 9.7.2003 and made in Crl.Mp.No.6106/03 in Crl.Rc.997/03.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.997 OF 2003

S.Dhanapalan .. Petitioner/accused

-vs-

The Chief Enforcement Officer
Enforcement Directorate
Shastrii Bhavan
Chennai-6 .. Respondent/complainant

This Revision is filed against the Judgement dated 7.7.2003 in C.A.No.193 of 1998 on the file of the learned Principal Sessions Judge,Chennai confirming the Judgment passed by the Additional Chief Metropolitan Magistrate, E.O.I.Egmore, Chennai in C.O.C.C.NO.795 of 1993 dated 25.8.1998.

For petitioner : : Mr.K.Ashokan
Senior Counsel
for M/s.M.Shahjahan

For respondent : : Mr.K.Ramasamy
Special Public Prosecutor for
Enforcement Directorate.

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O R D E R

This revision has been preferred against the Judgment in C.A.No.193 of 1998 on the file of the Principal Sessions Judge, Chennai. The Chief Enforcement Officer, Enforcement Directorate, Madras-6 has filed a complaint againsnt the accused for contravening the provisions of Section 8(1) r/w 56(1)(i) of FERA,1973.

2. The short facts in the complaint relevant for the purpose of deciding this revision are as follows:
On intelligence received by the Enforcement Directorate against the accused that he had unauthorisedly opened a firm by name M/s Gross Machinery and Equipment at No.14, Garden Street, Darfield, Barnslay, U.K and agreed to supply printing machinery to M/s Deccan Security Press, Coimbatore at Door No.100,4th Street, Abhirampuram, Madras-18. When a search was conducted by the Officer of Enforcement Directorate on vigilance on 6.11.1987 nothing incriminating was seized. The accused was examined by Enforcement Officer, Madras on 6.11.1987 and 9.11.1987. In his statement, he would depose that he was a Diploma Holder in Printing Technology and that one Mr.James Dennis D'saa, a specialised in the sale equipment was functioning from his house that M/s Deccan Security Press No.120, West Ponnurangam Road, R.S.Puram, Coimbatore-2 wanted to import certain printing machinery from London but they wanted his help in procurement of these machines, that the matter was discussed with the said Mr.James Dannis D'sa and M/s Deccan Security Press. In pursuance of the discussion with said James Dannis D'saa and M/s Deccan Security Press, the accused left for London on 12.3.1985 to clinch the deal for M/s Deccan Security Press and that during April 1985, he was not released any foreign exchange and his expenses was borne out by Mr.James Dannis D'sa through the office of M/s Gross Machinery and Equipment(GME). The said office was opened at London and the proforma invoice for import of machineries to M/s Deccan Security Press were printed in his office at Madras as requested by Mr.James Dannis D'sa. He signed the papers relating to GME as its Proprietor, that letter of credit was opened through Canara Bank,Madras by M/s Deccan Security Press in favour of GME, London. There were seven machineries were selected but when the letter of credit was opened, there were no machinery available with GME, London and it was opened with a hope to procure machinery worth 2,90,000 pounds. M/s Deccan Security Press had requested Canara Bank, Madras to open the letter of credit for 2,80,085 pounds in favour of GME,London for the import of reconditioned printing machines and Canara Bank, had opened Letter of credit No.905/229/85 dated 28.2.1985 on GME,London through Grindlays Bank, London for the said amount. M/s Deccan Security Press, Coimbatore had rejected the goods as the machineries arrived at Madras Port were not as per the specification in the letter of credit and the goods were reshipped with the permission of the Reserve Bank of India. M/s Grindlays Bank, London had advised M/s GME, London about the opening of letter of credit favouring them for 2,80,805 pounds which was a

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transferable letter of credit. The accused had advised M/s Grindlays Bank London by letter dated 4.4.1985 to transfer UK 2,50,000 pounds to M/s Lawrance martin Press Service Limited, London and M/s Grindlays Bank, London had transferred 2,50,000 pounds to M/s Lawrance Martin Press Service Ltd., and 29,789 pounds to M/s GME on 22.5.1985. M.s Grindlays Bank had filed a suit in the London Court against M/s GME and Lawrance Martin Press Service Ltd., for the recovery of the amounts paid. Since the machineries supplied were not inconformity with the letter of credit conditions.M/s Lawrance Martin Press Service Limited, London in his affidavit filed in the suit had interalia stated that 2,49,980 pounds paid by M/s Grindlays Bank, London to M/s Lawrance Martin Press Service Limited under the letter of credit referred in the affidavit of M/s John JamesScullian of M/s Grindlays Bank, London. The bank statements of M/s Lawrance Martin Press Service Limited account maintained with Midland Bank showed that they have received 2,49,980 pounds from M/s Grindlays Bank, London on 22/23rd May 1985 and also there was a debit of 1,00,000 pounds on 28.5.1985, M/s Lawrance Martin Press service had in their certificate date 3.6.1986 about the distribution of 2,49,990 pounds received from Grindlays Bank stated that " amount paid to GME 1,00,000 pounds ie., an amount debited in their account with Midland Bank as above. A directive under Section 33(2) of FERA,1973 was issued by the Assistant Director of Enforcement Directorate on 20.6.1993 to the Chief Manager, Grindlays Bank, Madras-1 to produce the necessary documents, affidavit before the Queen's bench Division, London in the matter of suit filed by M/s Grindlays Bank,London against the accused and M/s Lawrance Martin Press Service. A show cause under Section 8(1) of the FERA, 1973 was issued to the accused on 10.7.1992 requesting him to show cause as to why adjudication proceedings as contemplated under Section 51 of the FERA 1973 should not be held against him for the said contravention. Since there was no reply received from the accused for the call notice for personal hearing of the case, the case was adjudicated by the Special Director, New Delhi finding the acused guilty imposing a total penalty of Rs.10,00,000/- vide Adjudication order No.SDE(R)IV/34/93 dated 7.7.1993. The accused, a person resident in India acquired 29,789.91 pounds on 22.5.1985 from M/s Grindlays Bank, London and 1,00,000 pounds from M/s Lawrance Martin Press Service Ltd., London on 28.5.1985 totalling 1,29,789,91 pounds without the previous general or special permission from the Reserve Bank of India in contravention of Section 8(1) of FERA 1973 which is punishable under Section 56(1)(i) of the FERA 1973.

3. On appearance of the accused on summons, copies under Section 207 Cr.P.C were furnished to the accused. On the side of the prosecution, P.Ws 1 to 5 were examined and Exs P1 to P16 were marked.

3a)P.W.1 would depose that on the basis of intelligence received, he searched the premises of the accused at door No.100,4th Street, Abiramapuram, Madras on 6.11.1987 relating to import of press machineris from abroad with one James to Comibatore and for the import of printing machinery the proforma invoice were printed at the own press of the accused and for the import of press machineries letter of credit was

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opened at Canara Bank and for opening of the said letter of credit, the accused had given power to the said James and since the imported machineries were not in condition as it should be , they were returned back to London by Deccan Security Press , Coimbatore and in this regard, a Civil Suit has been registered at London Court against the accused and the Proprietor of GME company which is owned by the accused and in pursuance of the summons issued to him, the accused had given another statement on 9.11.1987 in his own hand writing affixing his signature in all the pages of the statements.

3b) P.W.2 another Enforcement Officer has deposed to the fact that he had authorised that he has been to investigate under Section 40 of FERA 1973 in the capacity of Gazetted Officer, that on 4.5.1989 he had recorded a statement of one Ponpandian who is the Partner of Deccan Security Press, Coimbatore who in his statement would admit that during February 1985, he had obtained a letter of credit to the tune of 2,89,000 pounds on 10.4.1985 and that he went to London to see the printing machineries and that he saw the machineries at London and since they were different from the machinery ordered , he did not take delivery of the machinery and returned the same to London and in pursuance of Ex P3 summons, he gave a statement on 12./6.1989 wherein he has admitted about his visit to London to see the machineries. Ex P5 is the statement of the accused .Ex P6 is the show cause notice issued by the Special Director on 15.1.1990 Ex P7 is the acknowledgment .Ex P8 is the order under which the Special Director had imposed a penalty of Rs.10,00,000/- to the accused. He had filed a complaint on 24.9.1993.

3c) P.W.3 Thiru Ponpandian, has deposed that he is having a printing press at Coimbatore and that the accused is one of the Directors of Gross Machineries and Equipments Limited, London and that the letter of credit for import of printing machinery on 28.2.1985 was opened to Canara Bank,Madras and that the accused had met him for booking orders for his company and as per the contract he went to London to inspect the machineries as per their order and after inspection he came back to India and that the company despatched the printing machine during May 1985. According to P.W.3, since the machineries imported were not as per the orders placed by them, they requested Canara Bank and Grindlays Bank to appoint Surveyors viz., SGS, Madras to inspect the machineries and a joint inspection was held by the Bank, surveyors and themselves and on inspection it was found that the machinery was not as per their orders and hence sent back to London and they took up the matter with the Bank and they received back the money from Canara Bank,Ice House Branch.

3d) P.W.4 is an Area Operation Officier at Grindlays Bank, Madras would admit that he had received a notice under Section 33(2) FERA from Enforcement Officer, Madras and he had sent a reply on 27.5.1991 along with Ex P11 Judgment copy of Queen's Bench ,Loondon.

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4.When incriminating circumstances were put to the accused, he would deny his complicity with the crime.

5. After going through the oral and documentary evidence available before the trial Court, the learned trial Judge has held that the charge against the accused has been proved beyond any reasonable doubt and accordingly convicted the accused under Section 8(1) r/w 56(1)(i) of FERA 1973 to undergo six months rigorous imprisonment and also slapped a fine of Rs.75,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal in C.A.No.193 of 1998 before the Court of Sessions, Chennai. The learned first appellate Judge after giving due deliberation to the argument advanced by both the learned counsels has held that there is no merit to interfere with the findings of the learned trial Judge and accordingly dismisised the appeal thereby confirming the Judgment of the trial Court which necessitated the accused to prefer this revision.

6. Mr.Ashokan,the learned Senior Counsel apeparing for the revision petitioner would focus the attention of this Court to proviso to Section 61(2) of the FERA 1973 and contended that without giving an opportunity of show cause, a person cannot be proceeded under the provisions for an offence punishable under Sections 56 and 57 of FERA 1973. The learned Senior counsel would mainly based his argument on Ex P6 said to have been issued to the accused by the complainant under Section 27 of FERA 1973 was not served on the accused properly and there was no acknowledgment for Ex P6 notice being served on the accused ,even as per the evidence of P.W.2. The learned Senior counsel would attract the attention of this Court to the deposition of P.W.2 in the cross examination in which he (PW2) would admit that Ex P7 acknowledgement is for Ex P6 notice. But Ex P7 is not acknowledgement for Ex P6 notice. But it is an acknowledgment for Exs P15 and P16 call letters issued to the accused under Section 8(1) of FERA. The learned Senior counsel would point out that even according to P.W.2 Ex P7 is not an acknowledgement for Ex P15 and Ex P16 call letters on which the entire edifice of the prosecution case rests.

7. The learned Special Public Prosecutor for Enforcement Directorate on the other hand would admit that the mere crumbling evidence of P.W2 in the cross examination will not derive us to come to the conclusion that there was no proper show cause notice given to the accused as contemplated under Section 56(1) of the FERA 1973 because Ex P7 acknowledgment is for the show cause and call letters issued to the accused under Exs P15 and P16 respectively for the violation under Section 8(1) of FERA 1973. The learned Special Public Prosecutor would take this court through Ex P7, EX P15 and Ex P16. The learned Special Public Prosecutor would contend that even in Ex P7 acknowldgment, it has been clearly stated by the accused that a notice No.T4/5-M/90/Call dated 31.3.1993 issued by the Special Director of Enforcement was received by him. In Ex P16, call letter it has been specifically mentioned that call Notice NOT4/5-M/90/call dated 31.3.1993 has been enclosed with the call notice. The call noticie

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reference is T4/5-M/90 dated 31.3.1993. Even under Ex P15 the reference No.is T4/5-M/90 as in ExP16. Ex P7 cannot be an acknowledgment for Ex P6 because that is dated 15.1.1990. Under such circumstances, the findings of the courts below that Ex P7 is the acknowledgment for Ex P15 and Ex P16 and not for Ex P6 has to be accepted.

8. The next point on which the learned Senior Counsel would attack the findings of the Courts below is that there is no documentary evidence produced by the prosecution to show that the accused is the Proprietor of GME and has violated the provisions of FERA to attract the liability under Section 8(1) of the FERA 1973. The entire case of the prosecution relies only on the confession statement of the accused under Exs P5,P13 and P14 . In Ex P13 statement the accused would admit that Mr.James who is the specialist in sale of importing equipments was functioning from his house at Abiramapuram, Chennai. At the time when Deccan Security wanted to import machinery from London and that James had an experience in importing machineries from London for one Seshan Printers, Coimbatore and also for Northern India Press, Coimbatore and for the purpose of purchasing machinery for Deccan Security Press, he went to London on 12.3.1985 and that proforma invoice was for import of machinery for Deccan Security Press was also printed in his press at Madras. He would admit in categorical terms that he had signed in the proforma invoice for GME, London as per the understanding , he had with Mr.James and in pursuance of the said understanding he had also opened L.C with Canara Bank, Madras in the name of M/s Deccan Security Press and the L.C. Was opened for the purchase of a machinery worth 2,90,000 pounds. At the time when the machineries were arrived at Coimbatore it was found that they were not in terms of the specification made and hence they returned the machineries to London and in this connection, he would admit that there was a Civil suit .Ex P11 is the copy of the Judgment in the High Court of Justice,Queen's Bench Division, Commercial Court,London (1985 G.No.2194). The said Civil Suit was between Grindlays Bank Private Limited and the present accused as D1, Laurence Martin Press Services Limited as D2, Laurence Martin as D3 Joseph James Dennis D'sa as D4 and J.D.Norman as D5. The said civil suit has been decreed against the second, third and fifth defendants.

9.With regard to the payment of money, the accused in Ex P14 statement would admit that he had received from Ponpandian during April 1985 that the document has been received and that the amount of 2,80,000 pounds have been paid out of this amount 2,90,000 bounds was paid in to the account of GME Yorkshire about 25,000 pounds was transferred to GME yorkshire as per authorisation given by GME and that he has been given authorisation to sign in the documents pertaining to GME by James.he also operated the bank account . For the specific question " Are you aware of suit Grindlays Bank London in the Queens Court against you? Yes, I am aware of it. According to the suit, I as the proprietor of GME, Yoorskhire is assurable to the extent of 1,29,000 pounds . He would further state that he is aware of the commission on this transaction to the extent of 29,000 pounds but he would deny that he is not aware of the

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transactions relating to 1,00,000 pounds which is relating to LMPS yorkshire.So from the statement of Ex P13 and ExP14 of the accused it is clear that the accused had dealt with the foreign exchange without obtaining necessary permission required under Section 8(1) of FERA 1973. So I do not find any reason to interfere with the findings of the first appelate Judge inC.A.No.193 of 1998.

10. When coming to the question of sentence, the learned Senior counsel would represent that some leniency may be shown on the accused . Taking into consideration, the plight of the accused had undergone for nearly 17 years from the date of show cause notice and that he was in prison for about one week and also paid a fine of Rs.75,000/- before the trial Court.

11. I heard the learned Special Public Prosecutor in this regard. The leared Special Public Prosecutor would point out that proviso to Section 56(1) of FERA 1973 which shows that if there is adequate and special reasons then the sentence of imprisonment can be even less than six months, the minimum prescribed under Section 56 of FERA 1973. Taking into consideration the long ordeal of trial, the accused had faced before the Courts below and also before this court, I am of the opinion that some leniency can be shown on the accused in the sentence.

12. In fine, the revision is allowed in part and the conviction by the first appellate Court in C .A.No.193 of 1998 is confirmed but the sentence alone has been modified to that of the period already undergone instead of six months rigorous imprisonment. The fine amount imposed by the Court below will sustain.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Chennai
2. The Additional Chief Metropolitan Magistrate, E.O.1,Chennai-8
3.-do- the Chief Metropolitan Magistrate, Egmore, Chennai
4. The Chief Enforcement Offficer, Enforcement Directorate, Shastri Bhavan,Chennai
5. The Special Public Prosecutor, Enforcement Directorate.
6.The superintendent of Central Prison, Chennai
+1 cc to Mr.M.Shahjahan, Advocate Sr.No.22984.
+1 cc to Mr.K.Ramasamy, Spl. p.p. Sr.No.23012.

AKM(CO)
dcp/2.5.07

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